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DISTRICT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,	)	3:73-cv-00127-MMD-WGC
	)	
Plaintiff,	)	
	)	<b>STIPULATION AND [PROPOSED]</b>
WALKER RIVER PAIUTE TRIBE,	)	<b>ORDER AMENDING ORDER</b>
	)	<b>REGARDING DISCOVERY AND</b>
Plaintiff-Intervenor,	)	<b>MOTION SCHEDULE</b>
	)	
v.	)	
	)	
WALKER RIVER IRRIGATION DISTRICT,	)	
a corporation, et al.,	)	
	)	
Defendants.	)	

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1. On March 16, 2020, the Court entered the Order Regarding Discovery and Motion Schedule and Procedure (the "Order"). ECF 2611.

2. Among other things, in Paragraph 8, the Order addresses Expert Discovery, including dates when expert reports are due.

3. Plaintiffs' opening expert reports were due on August 14, 2020.

4. The United States served 17 expert reports covering a wide range of subject matter related to the issues in this matter.

1           5.       The Walker River Paiute Tribe served two expert reports.

2           6.       Principal Defendants' opening and responsive expert reports are due on January  
3 29, 2021.

4           7.       Two of the United States' opening expert reports concern matters related to the  
5 history of the Walker River Indian Reservation and its land status history from 1859 to and  
6 including the present time (the "Historical Reports").  
7

8           8.       The Historical Reports are entitled "Historical Review of Water Development,  
9 Water Rights and the Creation of the Walker River Indian Reservation 1859-1049" by Ian  
10 Smith, and "Land Status History of the Walker River Indian Reservation" by Sandra Lewis.

11           9.       The Historical Reports are in whole or in part based upon a review of historical  
12 documents covering a time span from 1859 to the present, and which under ordinary  
13 circumstances are available to be researched at public archival and records offices.  
14

15           10.      The Principal Defendants have engaged an historical expert to provide a  
16 response to the Historical Reports and perhaps also to provide an opening expert report on  
17 historical matters which may not be directly addressed in the Historical Reports. Those reports  
18 are hereinafter referred to as the "Principal Defendants' Responsive Historical Report" and the  
19 "Principal Defendants' Opening Historical Report," respectively.

20           11.      Pursuant to her research plan, the historical expert engaged by the Principal  
21 Defendants to provide their Responsive Historical Report and/or their Opening Historical  
22 Report in this matter has identified several repositories that hold manuscript collections critical  
23 to her research and assignments in this matter. As of the present time, and for some time prior  
24 to August, 2020, each of those repositories have been and remain closed due to the Covid-19  
25 Pandemic, making archival research progress (outside of digitally available records)  
26 impossible.  
27  
28

1           12.     As of the present time, the Principal Defendants’ historical expert has been and  
2 is waiting for the following archive/records offices to reopen: the National Archives –  
3 Riverside; National Archives – San Bruno; National Archives – DC/College Park; California  
4 State Archives; Nevada State Archives; and the Water Resource Center Archives at the  
5 University of California (the “Archive / Records Offices”).  
6

7           13.     All of those repositories remain closed, with no present plans to reopen.

8           14.     The Plaintiffs and Principal Defendants have conferred and agree that Paragraph  
9 8 of the Order Concerning Expert Discovery should be modified in light of the foregoing  
10 circumstances.  
11

12           NOW, THEREFORE, pursuant to Paragraphs 14 and 16 of the Order, and pursuant to  
13 the direction provided by Magistrate Judge Cobb at the December 22, 2020 Status Conference  
14 concerning this modification, the parties hereby stipulate and agree as follows:

15           1.     Because the expert engaged to prepare the Principal Defendants’ Responsive  
16 Historical Report and the Principal Defendants’ Opening Historical Report needs access to the  
17 Archive/Records Offices, the January 29, 2021 due date for those reports is suspended.

18           2.     The suspension provided for in Paragraph 1 of this Stipulation will continue  
19 until an appropriate date determined by the Court. This date shall be a date after the reopening  
20 date of the Archive/Records Offices to which the Principal Defendants’ historical expert is  
21 awaiting access. In establishing this date, consideration will be given to the date of such  
22 reopenings, when the expert has been allowed access, obtained and reviewed materials, and the  
23 time needed to complete a report based upon the expert’s then schedule. In light of the  
24 unexpected delay occasioned by the Covid-19 Pandemic circumstances, the Principal  
25 Defendants’ historical expert shall take all reasonable steps, consistent with her then  
26 availability, to work expeditiously to access the Archive/Records Offices, and to complete the  
27  
28

1 Principal Defendants' Responsive Historical Report and the Principal Defendants' Opening  
2 Historical Report.

3 3. Commencing on February 1, 2021, and on the first judicial day of each month  
4 thereafter, the Principal Defendants will report to the Plaintiffs' Counsel and to the Court  
5 concerning the status of access to each of the Archive/Records Offices.

6 4. The Plaintiffs will share with the Principal Defendants any information which  
7 they may have concerning access to the Archive/Records Offices on the same schedule.

8 5. The date for Plaintiffs' Response to the Principal Defendants' Opening  
9 Historical Report, if any, is also suspended to a date which is 60 days after the Principal  
10 Defendants' Opening Historical Report is served.

11 6. The date for Plaintiffs' Rebuttal to the Principal Defendants' Responsive  
12 Historical Report is also suspended to a date which is 60 days after the Principal Defendants'  
13 Responsive Historical Report is served.

14 7. The date for Principal Defendants' Rebuttal to Plaintiffs' response to Principal  
15 Defendants' Opening Historical Report is also suspended to a date which is 60 days after  
16 Plaintiffs' Responsive Report is served.

17 8. Depositions of experts whose opening, responsive and/or rebuttal reports are  
18 delayed by this Stipulation shall be delayed until the last of such reports have been served. In  
19 the event insufficient time exists to complete such depositions within the discovery period,  
20 Plaintiffs and Principal Defendants will seek appropriate relief from the Court.

21 9. The Principal Defendants will provide on the current schedule (by January 29,  
22 2021) the identity and qualifications of their historical expert, her publications, and past  
23 testimony as provided in Fed. R. Civ. P. Rule 26(a)(2)(B).

10. The schedule for and expert report sequence for all other opening, responsive and rebuttal expert reports as set forth in Paragraph 8 of the Order are not modified by this Stipulation and Order, and shall remain as provided therein and in the following table:

<b>Non-Historical Expert Sequence</b>			
Plaintiffs' Opening	August 14, 2020		
Defendants' Response	January 29, 2021	Defendants' Opening	January 29, 2021
		Plaintiffs' Response	March 26, 2021
Plaintiffs' Rebuttal	April 30, 2021	Defendants' Rebuttal	April 30, 2021

11. If the author of one or more of the non-historical expert reports which will be provided on the current schedule set forth in Paragraph 10 above later becomes aware of information obtained from archival research which is the result of the facilities reopening and which, in their judgment, is relevant to their opinions, they may supplement their reports and opinions within 30 days.

Dated: December 24, 2020.

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**ORDER**

Dated: \_\_\_\_\_, 2020. IT IS SO ORDERED.

\_\_\_\_\_  
William G. Cobb  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

I certify that I am an employee of Woodburn and Wedge and that on the 24th day of December, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

Further, pursuant to the *Superseding Order Regarding Service and Filing in Subproceeding C-125-B on and by All Parties* (ECF 2100) at 10 ¶ 20, the foregoing does not affect the rights of others and does not raise significant issues of law or fact. Therefore, the Walker River Irrigation District has taken no step to serve notice of this document via the postcard notice procedures described in paragraph 17.c of the *Superseding Order*.

/ s / Gordon H. DePaoli  
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